IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9740 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANKAR GANESHBHAI NANJIBHAI - Petitioner(s)
Versus
BALUBHA MOHBATSINH & 3 - Respondent(s)

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Appearance :
MR SV PARMAR for Petitioner(s) : 1,
MR HM JADEJA for Respondent(s) : 1 - 2.
MS.NISHA PARIKH, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/04/2007

ORAL JUDGMENT

1. Shri S.V.Parmar, learned counsel for the petitioner; Shri H.M.Jadeja, learned counsel for the respondents no. 1 and 2; Ms. Nisha M.

Parikh, learned AGP for the respondents no. 3 and 4.

2. The short facts necessary for disposal of the present writ application are that, in ceiling proceedings against Balubha Mohabatsinh, vide order dated 20th May, 1977, certain extent of the land was declared excess and the said Balubha Mahobatsinh was directed to hand over possession of the excess land. Being aggrieved by the order dated 20th May, 1977, the said Balubha Mahobatsinh preferred an appeal before the Deputy Collector, who dismissed the same on 11.5.81. The order dated 11.5.81 was not immediately challenged within limitation, but the said Balubha Mohabatsinh under some ill-advice or because of misconception of law filed yet another appeal challenging the very same order dated 20th May, 1977 before the same Deputy Collector, the Deputy Collector dismissed another appeal vide his order dated 30th April, 1994 holding that such appeal was not maintainable. The said Balubha Mohabatsinh, being aggrieved by the orders dated 11.5.81 and

30.4.94 filed two revisions before the Gujarat Revenue Tribunal submitting, *inter alia,* that the orders passed by the Deputy Collector were bad and the order dated 20th May, 1977 was also bad. The Tribunal held that another appeal challenging the order dated 20th May, 1977 was not maintainable in view of the dismissal of the first appeal. It was also observed that the order dated 11th May, 1981 has been challenged somewhere in the year 1994 and as there was no justifiable ground to condone the delay, revision could not be entertained. From the said order, it would be clear that the revision against the order dated 11.5.81 was dismissed as barred by limitation, while against the order dated 30th April, 1994, revision was dismissed as not maintainable. The said order came to be challenged in Special Civil Application No. 4193 of 1998, the petition was dismissed on 7.9.98, holding, *inter alia,* that the Tribunal was absolutely justified in dismissing the revision.

3. Kamlaba, wife of Balubha Mahobatsinh filed Special Civil Application No. 4669 of 1998

submitting, *inter alia,* that at the time of allotment of the excess land alleged to be belonging to Balubha Mahobatsinh, her land were allotted in favour of present petitioner Vankar Ganeshbhai Nanjibhai. The said Special Civil Application No. 4669 of 1998 was dismissed by the High Court, holding that the petition was raising disputes as to identity of the land, possession of which was delivered to the allottee. The High Court granted liberty in favour of Kamlaba Balubha Rana that she could approach the revenue authorities for identification of land.

4. Though liberty was limited, but a revision came to be filed before the Collector, Surendranagar, registered as Land Ceiling/2/v/Case No. 1/97-99 and the first order dated 20th May, 1977 came to be challenged before the Collector. The Collector, after appreciating the facts and after going through the factual background, exercised his powers under Section 37 of the Gujarat Agricultural Lands Ceiling Act, 1960, set aside the order dated 20th May, 1977 and held

that Balubha Mohabatsinh Rana did not possess any excess land. The petitioner being aggrieved by the said order passed by the Collector, is now before this Court.

5. Shri Parmar, learned counsel for the petitioner submits that in view of the language of Section 37 of the Ceiling Act, it would clearly appear that the Collector would be entitled to exercise his revisional powers if no appeal has been filed. According to him, if the appeal was filed and dismissed on merits, then, the very same Deputy Collector or Collector could not exercise revisional powers, because, in a case where appeal stands dismissed, exercise of the revisional powers by the same authority would tantamount to review of the earlier order. His submission is that liberty granted by the High Court was in favour of Kamlaba Balubha, that too, for identification of the land and not otherwise. His submission is that the said order dated 21st June, 1999 deserves to be quashed.

6. Shri Jadeja, learned counsel for the respondents no. 1 and 2 submits that as Balubha Mohabatsinh

did not possess any excess agricultural land and as the Collector found that the earlier order dated 20.5.77 was illegal, the said Collector could exercise his revisional powers to mend the illegality at any time. Ms. Nisha M. Parikh, learned AGP also supports the order passed by the Collector, submitting, inter alia, that if Balubha Mohabatsinh did not possess any land in excess of the ceiling limit and the order dated 20.5.77 was an illegal order, then, such order could be set aside by the Collector in his revisional jurisdiction. It is also submitted by her that after the Collector had passed order on 21st June, 1999, the present petitioner was allotted some other land, therefore also, the present petitioner would have no authority or cause to challenge the order passed by the Collector.

7. Undisputedly, the order dated 20.5.77 was made against the interest of Balubha Mohabatsinh Rana. That order came to be challenged by the said Balubha Mohabatsinh in an appeal which was dismissed on 11.5.81. If said Balubha

Mohabatsinh Rana was aggrieved by the order dated 11.5.81, then, he should have challenged the correctness, validity and propriety of the said order before the Revenue Tribunal in a duly constituted revision. It appears that instead of challenging the order dated 11.5.81 before the appropriate forum, under some advice or some misconception, said Balubha Mohabatsinh Rana again challenged the first order dated 20.5.77 before the same Deputy Collector for the same relief. The Deputy Collector, after understanding the niceties of the law held vide his order dated 20th April, 1994 that yet another appeal challenging the order dated 20.5.77 was not maintainable. The said orders came to be challenged before the Gujarat Revenue Tribunal in revision. The Tribunal dismissed the revision against the order dated 11.5.81 holding that it was barred by limitation and the revision challenging the order dated 30th April, 1994 was also dismissed holding that the Deputy Collector was justified in not entertaining the appeal. The order was approved by this Court in Special

Civil Application No. 4193/98. Section 37 of the Gujarat Agricultural Lands Ceiling Act, 1960 reads as sunder:-

> *"**37. Collector's power of revision.**__Where no appeal has been filed within the period provided for if, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time,__*
>
> > *[a] call for the period of any inquiry of the proceedings of any Mamlatdar or of the Tribunal other than the proceedings of an award for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal as the case may be, and*
> >
> > *[b] pass such order thereon as he deems fit;*
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> *Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to*

appear and be heard."

8. The opening words of the Section are; "Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time, exercise his powers of revision". The first condition for exercising suo motu revisional powers or such revisional powers on a reference made by the State Government is that the first order has not been challenged in appeal.

9. Section 35 provides that an appeal against any order of the Mamlatdar or any order other than an award under Section 24 made by the Tribunal may be filed to the Collector. In the present case, against the order passed by the Mamlatdar, an appeal was already filed before the Collector/Deputy Collector and the said appeal was already dismissed. If the appeal was already dismissed on 11.5.81, then, the said Balubha Mohabatsinh Rana had no cause surviving for filing yet another appeal. It also goes without saying that another appeal has been

filed against the first order and it has been decided on merits, then, the very same appellate authority cannot exercise revisional powers, because, any order granting revision would be upsetting the order passed in appeal. Exercise of the revisional powers, in fact, would amount to exercise of powers of review and under the grab and cover of revision, very same appellate authority cannot review the earlier order. In the present case, the revisional authority could not exercise its powers, specially because, the order dated 20.5.77 was confirmed on 11.5.81, revision against the said order was dismissed by the Revenue Tribunal and order passed by the Tribunal was confirmed by the High Court. The order dated 21st June, 1999 passed by the Collector is patently without jurisdiction. The Collector could not assume jurisdiction to entertain the revision even under the cover and protection of the order dated 7.9.98 passed by this Court in Special Civil Application No. 4669/98 [Kamlaba Balubha Rana v. State of

Gujarat]. The High Court had granted liberty in favour of Kamlaba that she could approach the authority for fixing identity of the land. If liberty was limited, the Collector could not assume unlimited jurisdiction and pass an illegal order.

10. So far as the submission of Ms. Parikh that some other land has already been allotted in favour of the petitioner is concerned, grant of additional land or other land to the petitioner would not make illegal order a legal one. In this writ application, we are concerned with the correctness, propriety and validity of the order dated 21st June, 1999 passed by the Collector, Surendranagar. Assuming for a minute that the petitioner had been put in possession of some other land, then too, in the opinion of this Court, the order passed by the Collector would not become valid. As a fact, if the State has allotted some other land to the present petitioner, then, the State Government would be entitled to take back possession of such land after putting the petitioner in possession of

the land which was earlier allotted to the petitioner.

11. The State shall complete the entire exercise of taking over possession from Balubha Mohabatsinh Rana within the period of three months and hand over the same to the present petitioner and in case, any other land has been allotted to the present petitioner, then, possession of the said land would be taken by the State from the present petitioner. It is made clear that the petitioner would not be entitled to raise any objection in case he is put in possession of the land earlier allotted to him and the State wants to take possession of the land which was later on given to him.

12. The petition is allowed with costs. The State Government to pay Rs. 10,000/- [Rupees Ten Thousand only] to the petitioner as costs. Rule is made absolute.

[R.S. GARG, J.]

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